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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,136	01/05/2000	DAVID WILLIAM HOUSE	1420-2	1290
20575	7590	03/07/2005	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 1030 SW MORRISON STREET PORTLAND, OR 97205			NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/478,136	HOUSE, DAVID WILLIAM
	<b>Examiner</b>	<b>Art Unit</b>
	Suhan Ni	2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 September 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 7-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

1. This communication is responsive to the provisional election filed 09/21/2004 without traverse to prosecute the invention of Group II, claims 7-12. Group I, claims 1-6 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
2. This application contains claims 1-6 drawn to an invention nonelected without traverse in Paper No. 19. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Loeb et al. (U. S. Pat. - 5,571,148).

Regarding claim 7, Loeb et al. disclose a cochlear implant system comprising: at least one electrode (38) for coupling with the patient's cochlea; an internal coil (30) for implanting in the patient to drive the electrode; a microphone (70) for outputting electrical sound signals in response to external sounds; an oscillator (66) for generating an electrical analog carrier signal having a frequency greater than 20 kHz (col. 11, lines 11-12); a modulator (66) for modulating

the carrier signal with the sound signals to generate a modulated signal (col. 11, lines 9-16); and an external coil (56) for magnetically coupling the modulated signal to the internal coil, wherein the modulated signal is electrically applied to the cochlea (Figs. 2B and 4A) as claimed.

Regarding claims 8-9, Loeb et al. further disclose the cochlear implant system, wherein the modulator is an amplitude modulator (AM) or a frequency modulator (FM) (col. 11, lines 12-16).

Regarding claim 10, Loeb et al. further disclose the cochlear implant system, wherein the electrical analog carrier signal has a frequency of **at least** 32 kHz (col. 11, lines 11-12) as claimed.

Regarding claims 11-12, Loeb et al. further disclose the cochlear implant system, wherein the modulator is an amplitude modulator (AM) or a frequency modulator (FM) (col. 11, lines 12-16).

### *Conclusion*

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (703) 305-4708.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(703) 305-3900**.

February 27, 2005



SUHANI  
PRIMARY EXAMINER